

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
UNITED STATES OF AMERICA : Docket #1:17-mj-
 : 00193-UA
Plaintiff, :
- against - :
DIAZ, SALVADOR, : New York, New York
 : February 15, 2017
Defendant. :
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PROCEEDINGS BEFORE
THE HONORABLE JUDGE GABRIEL W. GORENSTEIN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: U.S. v. Salvador Diaz. Counsel,
3 please state your name for the record.

4 MS. JESSICA GREENWOOD: Yes. Good afternoon,
5 your Honor. Jessica Greenwood here today on behalf of the
6 government.

7 MS. MIRON: Good afternoon. Federal Defenders by
8 Annalisa Miron and Meghan Gilligan on behalf of Mr. Diaz.

9 HONORABLE GABRIEL W. GORENSTEIN (THE COURT): Do
10 we have the time and date of arrest?

11 MS. GREENWOOD: Yes, your Honor, Mr. Diaz arrived
12 in the Southern District of New York on an out-of-state
13 arrest on a Southern District warrant at approximately
14 10:40 AM this morning, February 15, 2017.

15 THE COURT: All right, sir, I'm Judge Gorenstein.
16 I'm going to begin by telling you you're not required to
17 make any statements to the authorities. Anything you said
18 to them could be used against you.

19 If you are not a U.S. citizen, you may request
20 that the government notify a consul or officer from your
21 country that you have been represented.

22 You have the right to be represented by an
23 attorney. If you could not afford one, you have the right
24 to request that the Court appoint one for you. I have
25 before me a Financial Affidavit form that you signed under

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penalty of perjury. Based upon the statements that you've made upon this form, I'm approving the appointment of counsel.

I have before me a complaint that contains the charges in this case. The charge is that you were required to register under the Sex Offender Registration Notification Act; that you failed to update a registration in that you moved from a residence in New York without updating your registration in New York.

Counsel, have you seen this complaint?

MS. MIRON: Yes. And I've reviewed it with Mr. Diaz, who's waived a public reading.

THE COURT: Sir, you have a right to a hearing at which the government would have to show probable cause to believe that you committed this crime. However, a hearing would not be held if you were indicted by a grand jury.

I'll hear from the government next as to bail or detention.

MS. GREENWOOD: Yes, your Honor. The government seeks detention.

THE COURT: Counsel, how do you want to proceed?

MS. MIRON: We would request a hearing today.

THE COURT: Are you ready to go now?

MS. GREENWOOD: Yes, your Honor.

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THE COURT: Are you ready?

MS. MIRON: Yes.

THE COURT: Okay.

MS. GREENWOOD: Your Honor, the government seeks detention on the basis, first and foremost, that there is a significant risk of nonappearance with Mr. Diaz; that we don't believe there are conditions that can reasonably assure his appearance in the future.

Several factors weigh in favor of finding that he is a risk of flight. First, the weight of the evidence against him is clear; there are clear documented instances of his awareness of his requirements to register and update his registration as a sex offender and his failure to do so since 2014, despite moving locations and changing the nature of his employment between New York, New Jersey, and Virginia, as well, where he was arrested. He does not have stable employment, as indicated in the Pretrial Report, and also lacks a stable residence. We understand from the Pretrial Report, as well as the findings made at the detention hearing in Virginia, where he was initially arrested, that he's lived somewhat of an itinerant existence in a mobile home or an RV through different locations in Virginia and does not appear to have stable connections to this district that would allow us to assure

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2 his appearance here.

3 With respect, your Honor, to the probation's
4 recommendation, as you can see, they recommended a series
5 of precautions and conditions, including his home
6 incarceration at a particular residence in New Jersey,
7 which would be 243 Purdue Avenue, Pemberton, New Jersey.
8 Your Honor, I would just point out that the government has
9 concerns about that particular address, first, because, you
10 know, the United States marshals before ultimately locating
11 Mr. Diaz in Virginia did surveillance on that particular
12 residence and found no evidence that he was in fact
13 residing there, although he has described it as his primary
14 residence. In addition, I've learned from defense counsel
15 that there is a 17-year-old living on the premises, which
16 would also be a concern.

17 For all those reasons, your Honor, we just don't
18 feel that there are conditions that can reasonably assure
19 his appearance in the future.

20 MS. MIRON: Your Honor, Mr. Diaz is a 63-year-old
21 man who has no record of flight from any proceeding. He
22 does have that prior conviction from 2000. He was released
23 from detention prior to trial and made all of his
24 appearances. Indeed, when he was found guilty, he returned
25 the next day for sentencing, with no problems of flight

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there. And he has no record, since 2007, of being arrested or fleeing any court. So there's no pattern of flight in his history.

He has a sister who lives in New Jersey with whom I've spoken who would sign a bond for him. Her name is Marita Rodriguez. She also suggests her daughter, who's a 27-year-old, employed and lives in their home, as another co-signor. Ms. Rodriguez would welcome Mr. Diaz to their home. It's a four-bedroom place in New Jersey. I revealed to the government that there's a 17-year-old there, simply because his sister raised that concern with me, she wouldn't want him to violate any condition. I don't --

THE COURT: I'm sorry, who raised it with you?

MS. MIRON: His sister, the --

THE COURT: Oh, the mother of the child? I'm sorry --

MS. MIRON: She's the mother of the child and also the potential co-signor.

THE COURT: Got it.

MS. MIRON: You know, and his pretrial recommends release in this case. They do suggest a condition that he have no unsupervised contact with minor children. This minor boy will turn 18 in April, and I think that they could arrange a situation where Mr. Diaz would not have

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2 unsupervised contact with the minor, if that's necessary,
3 although we would ask for an exception to this rule.

4 If that --

5 THE COURT: This is his nephew?

6 MS. MIRON: Yes.

7 MS. GREENWOOD: Yes, your Honor. That's my
8 understanding from defense counsel. Obviously, I don't
9 have any independent knowledge.

10 THE COURT: No, I'm asking defense counsel.

11 MS. GREENWOOD: Go ahead.

12 MS. MIRON: That's right.

13 So we propose that as a stable residence, and she
14 would invite Mr. Diaz to their home. If that is not a
15 possibility, in light of our revelation, then we would ask
16 that he be able to return to Virginia. He does own a
17 mobile home there. He is renting land. The reason it's
18 been somewhat unstable is because the first mobile-home
19 location was not weatherproof, so he had -- winterized, so
20 he had to rent a different mobile home. And, indeed, I
21 think, given the difficulties people have when they're
22 required to register as sex offenders, I think, frankly, a
23 mobile home on land is a creative solution. And that's one
24 that Mr. Diaz has tried out. But we would recommend that
25 he be able to live in New Jersey.

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And pretrial recommends two signatures on a bond. We would ask for the same conditions, that there be a low bond in the amount of, say, 25--- or \$50,000. These are not wealthy individuals. He does actually have family here in New York. He has a brother, but his brother, Louis Diaz, is not doing well. He lives on Frederick Douglas Boulevard. I imagine Mr. Diaz could stay there for a little while, but it's not a permanent place for him to live, but that does show that he has contacts in New York that would ensure his reappearance.

He does not have a job. He receives a constant source of income from disability, disability that he receives as part of his over-20-year service in the Navy. So he is financially stable, although he's not working full time.

So for all of those reasons I do think this is a case where conditions could be met that would ensure his reappearance in court, and that is the only basis for the government's request for detention.

THE COURT: Anything else from the government?

MS. GREENWOOD: No, your Honor.

THE COURT: All right. I don't believe the government has met its burden of showing that there's no combination of conditions that will ensure the defendant's

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2 return to Court or the safety of the community. Based upon
3 the facts recited in the Pretrial Report, I'm going to
4 allow the defendant to be released on a \$50,000 personal
5 recognizance bond, to be co-signed by two financially
6 responsible persons; travel restricted to the Southern and
7 Eastern Districts of New York and District of New Jersey;
8 surrender of any travel documents, such as passports, any
9 new applications; mental health evaluation and treatment as
10 directed by Pretrial Services; defendant to submit to
11 urinalysis; if positive, drug testing and treatment; home
12 incarceration with electronic monitoring; defendant's to
13 live with his sister in New Jersey; he's not to have any
14 supervised contact with minors except that I'm not putting
15 any restrictions on his contact with his 17-year-old
16 nephew.

17 MS. MIRON: Your Honor, you stated supervised
18 contact or --

19 THE COURT: No unsupervised contact with minors.

20 MS. MIRON: Thank you.

21 THE COURT: Okay. Did I say "supervised"?

22 MS. MIRON: I heard "supervised."

23 THE COURT: Okay. So they wrote down
24 "unsupervised," do I'm glad you corrected me.

25 No unsupervised contact with minors except that

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2 he may have unrestricted contact with his 17-year-old
3 nephew; defendant not to possess a firearm or destructive
4 device or other weapon.

5 I have to figure out about the release. What --
6 do you need to set up the --

7 PROBATION: Yes. We would request, your Honor,
8 that all conditions be met prior to release, including LM,
9 his relation with New Jersey.

10 THE COURT: Okay. How long does that take, do
11 you know?

12 PROBATION: It should be done within the next
13 couple of days.

14 THE COURT: Okay. All right. So defendant to be
15 detained until all conditions are met.

16 A preliminary hearing date?

17 MS. MIRON: I'll request the 30th day.

18 THE COURT: 4/17.

19 Anything else from the government?

20 MS. GREENWOOD: No, your Honor.

21 THE COURT: Defense counsel?

22 MS. MIRON: Your Honor, I'm just flagging the
23 issue that Mr. Diaz will have to, essentially, wrap up his
24 residence in Virginia, his mobile home, at some point.

25 THE COURT: And, therefore, might have to travel

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2 there?

3 MS. MIRON: I would request a day -- I can
4 arrange this with Pretrial, but --

5 THE COURT: I mean, I can put in a notation. So
6 at some point travel should be permitted to, what is it,
7 sell his mobile home or --

8 MS. MIRON: So to terminate the lease on the land
9 in Virginia. I think he would retain his mobile home.

10 THE COURT: What is the act he needs to do and
11 what location?

12 MS. MIRON: To retrieve belongings from the
13 Eastern District of Virginia and term --

14 THE COURT: So that's all he needs to do; he
15 needs to get his things from the Eastern District of
16 Virginia. He doesn't need to be there to sell something or
17 do anything else?

18 MS. MIRON: That's right, your Honor.

19 THE COURT: It's in where in Virginia?

20 MS. MIRON: Right. The Eastern District of
21 Virginia. Temperanceville, which is on the first page of
22 the Pretrial Services Report.

23 THE COURT: All right. I'll add the additional
24 condition, Defendant to be permitted to retrieve his
25 possessions from his home in Virginia, with notice to

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Pretrial Services and by arrangement with them.

MS. MIRON: Thank you.

THE COURT: Anything else?

MS. GREENWOOD: Not from the government.

MS. MIRON: No, your Honor. Thank you.

THE COURT: All right. Thank you.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of USA v. Diaz, Docket #1:17-mj-00193-UA, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Carole Ludwig

Signature _____

Carole Ludwig

Date: April 12, 2017